PROVIDING AUTHORITY FOR PROTECTING HEADS OF FOREIGN STATES

HEARING

BEFORE

SUBCOMMITTEE NO. 3

OF THE

COMMITTEE ON THE JUDICIARY

HOUSE OF REPRESENTATIVES

EIGHTY-EIGHTH CONGRESS

ON

H.R. 7651

A BILL TO PROVIDE AUTHORITY TO PROTECT HEADS OF FOREIGN STATES AND OTHER OFFICIALS

MARCH 12, 1964

Serial No. 7

Printed for the use of the Committee on the Judiciary

U.S. GOVERNMENT PRINTING OFFICE
32-230 WASHINGTON : 1964

COMMITTEE ON THE JUDICIARY

EMANUEL CELLER, New York, *Chairman*

MICHAEL A. FEIGHAN, Ohio
FRANK CHELF, Kentucky
EDWIN E. WILLIS, Louisiana
PETER W. RODINO, JR., New Jersey
E. L. FORRESTER, Georgia
BYRON G. ROGERS, Colorado
HAROLD D. DONOHUE, Massachusetts
JACK BROOKS, Texas
WILLIAM M. TUCK, Virginia
ROBERT T. ASHMORE, South Carolina
JOHN DOWDY, Texas
BASIL L. WHITENER, North Carolina
ROLAND V. LIBONATI, Illinois
HERMAN TOLL, Pennsylvania
ROBERT W. KASTENMEIER, Wisconsin
JACOB H. GILBERT, New York
JAMES C. CORMAN, California
WILLIAM L. ST. ONGE, Connecticut
GEORGE F. SENNER, JR., Arizona
DON EDWARDS, California

WILLIAM M. McCULLOCH, Ohio
WILLIAM E. MILLER, New York
RICHARD H. POFF, Virginia
WILLIAM C. CRAMER, Florida
ARCH A. MOORE, JR., West Virginia
GEORGE MEADER, Michigan
JOHN V. LINDSAY, New York
WILLIAM T. CAHILL, New Jesey
GARNER E. SHRIVER, Kansas
CLARK MacGREGOR, Minnesota
CHARLES McC. MATHIAS, JR., Maryland
JAMES E. BROMWELL, Iowa
CARLETON J. KING, New York
PATRICK MINOR MARTIN, California

BESS E. DICK, *Staff Director*
WILLIAM R. FOLEY, *General Counsel*
WALTER M. BESTERMAN, *Legislative Assistant*
WILLIAM P. SHATTUCK, *Legislative Assistant*
CHARLES J. ZINN, *Law Revision Counsel*
MURRAY DRABKIN, *Counsel*
HERBERT FUCHS, *Counsel*
WILLIAM H. COPENHAVER, *Associate Counsel*

SUBCOMMITTEE No. 3

EDWIN E. WILLIS, Louisiana, *Chairman*

WILLIAM M. TUCK, Virginia
ROLAND V. LIBONATI, Illinois
HERMAN TOLL, Pennsylvania
ROBERT W. KASTENMEIER, Wisconsin
WILLIAM L. ST. ONGE, Connecticut

JOHN V. LINDSAY, New York
WILLIAM T. CAHILL, New Jersey
CHARLES McC. MATHIAS, JR., Maryland
PATRICK MINOR MARTIN, California

HERBERT FUCHS, *Counsel*

CONTENTS

PROVIDING AUTHORITY FOR PROTECTING HEADS OF FOREIGN STATES

THURSDAY, MARCH 12, 1964

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE NO. 3 OF THE
COMMITTEE ON THE JUDICIARY,
Washington, D.C.

The subcommittee met at 10 a.m., pursuant to call, in room 346, Cannon Building, Hon. Edwin E. Willis (chairman of the subcommittee) presiding.

Present: Representatives Willis, Tuck, Libonati, Kastenmeier, Lindsay, and Martin.

Also present: Herbert Fuchs, counsel.

Mr. WILLIS. The subcommittee will please come to order.

Subcommittee No. 3 is meeting to hear witnesses on H.R. 7651, a bill to provide authority to protect heads of foreign states and other officials.

(H.R. 7651 is as follows:)

[H.R. 7651, 88th Cong., 1st sess.]

A BILL To provide authority to protect heads of foreign states and other officials

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 112 of title 18, United States Code, is amended to read as follows:

"§112. Assaulting certain foreign diplomatic and other official personnel

"Whoever assaults, strikes, wounds, imprisons, or offers violence to the person of a head of a foreign state or foreign government, foreign minister, ambassador, or other public minister, in violation of the law of nations, shall be fined not more than $5,000, or imprisoned not more than three years, or both.

"Whoever, in the commission of any such act, uses a deadly or dangerous weapon, shall be fined not more than $10,000, or imprisoned not more than ten years, or both."

SEC. 2. The analysis in chapter 7 is amended by deleting

"112. Assaulting public minister"

and inserting in lieu thereof

"112. Assaulting certain foreign diplomatic and other official personnel".

SEC. 3. Section 1114 of title 18, United States Code, is amended by inserting immediately before "while engaged in the performance of his official duties," the following: "security officers of the Department of State and the Foreign Service,".

SEC. 4. The Act of June 28, 1955 (69 Stat. 188), is amended by adding a new section at the end thereof, to read as follows:

"Security officers of the Department of State and the Foreign Service engaged in the performance of the duties prescribed in section 1 of this Act are empowered to arrest without warrant and deliver into custody any person violating section 111 or 112 of title 18, United States Code, in their presence or if they have reasonable grounds to believe that the person to be arrested has committed or is committing such a violation."

Mr. WILLIS. This measure was introduced by Judiciary Committee Chairman Celler as the result of a request from the Secretary of State.

Sections 1 and 2 would amend 18 U.S.C. 112 which makes it a Federal offense to assault "an Ambassador or other public minister, in violation of the law of nations" by adding "heads of foreign states or foreign governments and foreign ministers" to the protected class.

Section 3 of the bill would amend 18 U.S.C. 1114, which makes it a Federal offense to kill certain specified Federal officials while engaged in the performance of their official duties, by adding "security officers of the Department of State and the Foreign Service" to the protected class. (Under 18 U.S.C. 111, assault on this class is also a Federal offense.)

Section 4 of the bill would amend the act of June 28, 1955 (69 Stat. 188), which provides that security officers of the Department of State and the Foreign Service may carry firearms to protect heads of foreign states, high officials of foreign governments and other distinguished visitors to the United States, the Secretary of State, and the Under Secretary of State, and official representatives of foreign governments and of the United States attending international conferences, or performing special missions. Amendment would authorize these security officers to arrest without a warrant and deliver into custody any person violating 18 U.S.C. 111 or 112 in their presence, or if they have reasonable grounds to believe that the person to be arrested has committed or is committing such offense.

The Secretary of State, in a letter to the Speaker, declared that State Department security officers lack the necessary authority and Federal protection to perform their functions adequately, and that they are at present not legally empowered to intervene to prevent an assault against a foreign visitor until after the commission of the act.

In the 87th Congress the subcommittee heard testimony on a similar but broader bill.

The first witness this morning is the Honorable Richard D. Kearney, Deputy Legal Adviser, Department of State.

We are glad to have you, Mr. Kearney.

STATEMENT OF RICHARD D. KEARNEY, DEPUTY LEGAL ADVISER, DEPARTMENT OF STATE, ACCOMPANIED BY G. MARVIN GENTILE, DEPUTY ASSISTANT SECRETARY FOR SECURITY

Mr. KEARNEY. I have with me the newly appointed Deputy Assistant Secretary for Security in the Department, Mr. Gentile. And he is accompanied by two of his experts in this protection field in case you have any questions.

Mr. WILLIS. Will both of you give your names and your capacities.

Mr. KEARNEY. Richard D. Kearney, Deputy Legal Adviser of the Department of State.

Mr. GENTILE. G. Marvin Gentile, Deputy Assistant Secretary for Security.

Mr. KEARNEY. I have a statement, Mr. Chairman, which I would like to present to you if that is satisfactory.

Mr. WILLIS. Yes. Proceed.

Mr. KEARNEY. The purpose of H.R. 7651 is to provide the Department of State with sufficient authority to discharge its responsibilities

in safeguarding distinguished foreign officials who visit the United States under the auspices of the Government of the United States.

The bill has three provisions. In the first place, it amends title 18, United States Code, section 112. In its present form, section 112 makes it a felony to assault, strike, wound, imprison, or offer violence to the person of an ambassador or other public minister. This is a very old statute. It was enacted in 1791 and retains the form and terminology of a century and three-quarters past.

While the statute has remained unchanged, the situation which it was intended to meet has undergone very substantial changes. In 1791 the conduct of foreign relations was carried out almost exclusively through embassies and legations. Heads of state, heads of governments, and foreign ministers did not themselves go on missions to further the international relationhips of their countries. When, for one reason or another, a matter was not handled through an established embassy or legation, special envoys were sent. Exceptions to this practice occurred only in connection with extraordinary conferences such as the Congress of Vienna.

The carrying on of foreign relations through ambassadors and ministers remained the almost exclusive method of operation all through the 19th century. It was only during and after the Second World War that the practice of "personal diplomacy," that is, the carrying out of foreign relations by meetings between the heads of state, heads of government, and foreign ministers, began to assume a prominent place in diplomatic practice.

In the relatively short space of time since World War II, however, this practice of personal diplomacy has grown enormously. In the case of the United States, the number of special visitors is substantially increased by the fact that we are the leading world power. As a result of these factors, in fiscal year 1955, 25 heads of state and government visited the United States. There were 21 in 1956, 14 in 1957, 18 in 1958, 21 in 1959, 29 in 1960, 41 in 1961, and 37 in 1962.

In fiscal year 1963 there were 48 heads of state and government who came to the United States, but this figure is higher than normal as a result of the attendance at the funeral of President Kennedy. Moreover, in addition, approximately 25 foreign ministers visit Washington for consultation during the course of each year.

Visits of foreign heads of state or government, or foreign ministers, are undertaken only with the advance agreement of the U.S. Government. The U.S. Government, in authorizing the visit or extending an invitation, assumes an obligation under international law and practice of affording special protection to these highest dignitaries of foreign states who are traveling or visiting in its territory. Obviously, any assault upon, or violent action against, a visiting head of state, a head of government, or a foreign minister, could not but have a serious effect upon our relations with that state.

In view of these numerous visits of the highest dignitaries of foreign states to our shores, it is certainly appropriate to bring the 1791 statute up to date, in order to take account of this great change in circumstances. Consequently, the first provision of H.R. 7651 makes a very limited amendment to 18 U.S.C. 112 by adding a small but very important group comprising visiting heads of foreign states, heads of foreign governments, and foreign ministers.

Mr. WILLIS. At this point, I would like to ask a couple of questions, if you don't mind.

Sections 1 and 2 of this bill would amend title 18, United States Code, section 112. That law as it stands today makes it a Federal offense to assault "an ambassador or other public minister in violation of the law of Nations."

What does the phrase "in violation of the law of Nations" mean? How do you go about proving it? I wonder whether that language should be changed, or at least have its meaning made clear to us. How do you prove the "law of Nations"? Suppose someone did assault an ambassador, which is a heinous offense, and he is prosecuted. Why shouldn't he be prosecuted under common law? Wouldn't that be easier? And why should you have to have a special statute which requires you to prove the "law of Nations"?

Mr. TUCK. Another thing along that line, which concerns me, is that it is my understanding that ambassadors are exempt from arrest in this country, and yet the Federal Government would come in and arrest anyone involved in an altercation with one of these foreigners who might come in our States and insult our people, resulting in someone making an attack on him. Then a citizen involved in such an altercation could be sent to a Federal penitentiary, and not be tried by our own State courts.

Mr. WILLIS. Of course, we are talking about the law as it stands today. This bill would add heads of state, of foreign governments, and foreign ministers. But the law as it stands since 1791 is that it is a Federal criminal offense to assault "an ambassador or other public minister in violation of the law of Nations." And I would like to know what that law means before going into what is proposed to be added to it.

Mr. LIBONATI. Wouldn't this descriptive proposal place jurisdiction in the International Court to try it?

Mr. KEARNEY. No, sir.

Mr. WILLIS. This law has been on the books, the Federal criminal statute, since 1791. And this would mean that the prosecution would be, under the statute, before the U.S. courts. That is the law of today. We didn't enact it. But I would like to know what it means.

Mr. KEARNEY. Under international law, Mr. Chairman, the diplomatic representative of a foreign government is entitled to protection, from the government to which he is accredited, against any assaults or interference with him of the character described in this statute. In other words, this statute is setting forth, in effect, what is the "law of Nations" on the subject.

Mr. WILLIS. And makes it a Federal offense, susceptable to prosecution before the Federal Courts?

Mr. KEARNEY. That is correct, sir.

Mr. WILLIS. Now, how do you go about proving that law before a Federal court—the "law of Nations"—alleged to have been violated?

Mr. KEARNEY. This perhaps is a question which the Department of Justice representative is better qualified to answer than I am.

Mr. WILLIS. To be frank about it, I have asked that question of Justice, and they say you know about it.

Mr. KEARNEY. I will give you my opinion. All I am saying is that I am not the trial court.

The Supreme Court has held on numerous occasions in a great number of cases that the "law of Nations"—the international law—is part of the law of the United States. I don't think there would be any question of having to prove what international law is. I think it is a matter of which the Court would take judicial cognizance, as it would take judicial cognizance of the common law.

Mr. WILLIS. And you say it is part of the "law of Nations"?

Mr. KEARNEY. Yes, sir.

Mr. WILLIS. Since a nation to which an ambassador is assigned has the obligation of protecting his person, therefore an assault on the person of an ambassador violates the "law of Nations"?

Mr. KEARNEY. That is correct, sir.

Mr. WILLIS. Is that from textbooks, or writers on jurisprudence, or what?

Mr. KEARNEY. That is from textbooks; it is from international-law writers. It is now a part of the convention on diplomatic practice which was adopted at Vienna 3 years ago, and which is currently pending before the Senate. I can, I believe, give you a statement from one of our own writers on this matter. In the publication International Law, Chiefly as Interpreted and Applied by the United States, by Charles Cheney Hyde, which is a leading international law work in the United States, Professor Hyde states:

> Respect for the state which he represents demands that a minister shall at all times enjoy the right to fulfill his diplomatic function without hindrance or molestation. To that end it is essential that his person be afforded complete protection. This principle for which deference has been expressed in varying forms is solidly entrenched in the law of Nations. It serves to impose a heavy burden upon every state that is receptive of a diplomatic corps.

Mr. LIBONATI. But it follows this: they add in the section 2 "while engaged in the performance of his official duties," and then it states lower down in section 4—

> Security officers of the Department of State and the Foreign Service engaged in the performance of the duties prescribed in section 1 of this Act are empowered to arrest without warrant and deliver into custody any person violating—

To whom?

Mr. WILLIS. I realize that. We will come back to that. Thus far we have talked about sections 1 and 2 of the bill. I would like to clarify that, and we will then pass on to the other sections.

As I understand it—if I am wrong, correct me—the amendment proposed by sections 1 and 2 of the bill does no more than to add to the categories of people whose persons are to be protected, the "heads of foreign states or foreign governments and foreign ministers"; is that correct?

Mr. KEARNEY. That is correct, Mr. Chairman.

Mr. LIBONATI. Why not talk about the implementation subsequent thereto in the bill?

Mr. WILLIS. I think we should let the witness read his whole statement, because we can't examine him before he has expressed himself on it.

Proceed, sir.

Mr. KEARNEY. Thank you, sir.

We are not urging this amendment on a theoretical basis just in order to bring the statute in line with modern-day conditions. In

many instances the Department of State is in possession of advance information regarding threatened acts of violence against a visiting head of state or government. For example, when President Betancourt of Venezuela visited the United States in February 1963, information was received from the intelligence community of the U.S. Government that his airplane would be blown up when leaving Puerto Rico.

During the recent funeral of President Kennedy, several threats against the life of President de Gaulle of France were received. Some of this information was received from the French Government itself, while other information was received from the U.S. intelligence community. During the recent visit of President Tito to the United States in October 1963, several threats were received. In one instance, two anti-Tito pickets broke through on the 35th floor of the Waldorf Astoria Hotel where President Tito was residing. It was necessary to restrain them by physical force.

During the visit of Juan Bosch, President of the Dominican Republic, in January 1963, information was received from the U.S. intelligence community that certain individuals, by name, who were friendly to the opposition regime, would kill President Bosch while in New York.

It is clear that we should not refuse to approve the visits of these foreign dignitaries merely because threats against them have been made. But it is also quite clear that, having approved the visits, we should take ever reasonable measure to protect and safeguard our guests while they are in the United States. The proposed amendment of title 18, United States Code, section 112 is a necessary element in providing this protection.

Equally necessary are the second and third provisions in H.R. 7651, each of which relates to the activities of the security officers of the Department of State in protecting these foreign dignitaries during the course of their visits to the United States.

The State Department has undertaken the task of protecting visiting foreign dignitaries since 1917. However, the only legislation which serves to assist the Department in carrying out this difficult and very important function is the act of June 28, 1955 (5 U.S.C. 170(e)). This act authorizes the security officers of the Department to carry firearms for the purpose of "protecting heads of foreign states, officials of foreign governments, and other distinguished visitors to the United States."

While the Department security officers carry out this protective function, they are not included within the scope of 18 U.S.C. 1114 which makes the murder or manslaughter of a wide variety of officers or employees of the United States while engaged in the performance of their official duties a Federal offense.

The officers and employees presently covered include, for example, Post Office inspectors, all Coast Guard personnel, all Internal Revenue personnel, all immigration officers, as well as all Park Service employees, all employees of the Bureau of Animal Industry and of the Bureau of Land Management in the Department of Agriculture, and all employees of the Indian Field Service.

Since visiting heads of state and of government and foreign ministers are guests of the President and the Federal Government, the

Federal Government must be responsible for their protection and safety. If a security officer of the Department of State is killed while protecting a visiting head of state against an assassin, it is only fitting that this killing should be treated as a Federal offense. The second provision of H.R. 7651 amends 18 U.S.C. 1114, to place State Department security officers on an equal footing which the other law enforcement officers who are now covered by this section.

A State Department security officer who is assigned to protect foreign dignitaries should be able to arrest any individual who commits an assault or offers violence to a head of state, a head of government, or a foreign minister whom that officer has been assigned to protect while in the United States. Furthermore, in order to insure the safety of these foreign dignitaries, the security officer should be able to arrest an individual when he has reasonable grounds to believe that individual is going to injure the foreign dignitary.

Past experience has established that on numerous occasions the Department security officer is the only protective officer present with the dignitary during portions of his visit. He should not be in a position of having to wait until the head of state is actually assaulted before he can step in and take action.

In addition, the security officer should be authorized to arrest any individual who attempts to prevent him from carrying out his duty of protecting the foreign dignitary. Accordingly, the third provision of H.R. 7651 authorizes the Department security officers to arrest without warrant, and deliver into custody, any person who violates 18 U.S.C. 112 as amended, or any person assaulting, resisting, or interfering with the security officers while they are engaged in the performance of these protective duties.

The arrest could be made only if the violations are committed in the presence of the security officer or if the security officer has reasonable grounds to believe that the individual concerned has committed or is committing such a violation. The nature of this power to arrest is exactly the same as that given to agents of the Federal Bureau of Investigation, U.S. marshals and their deputies, and employees of the Bureau of Prisons of the Department of Justice (18 U.S.C. 3050, 3052, and 3053), but limited to the area of the protection of foreign dignitaries.

It is a reasonable grant of authority to men who are given a very heavy responsibility and who are scarcely in a position to discharge that responsibility without having such authority. Fortunately we have not had any serious incident involving a foreign head of state or government or a foreign minirster up to now, but the chance of such an incident is always present and always real. It would be very unfortunate if a head of state were to be violently assaulted in the United States and the incident might have been prevented if only we had the legislation on the books which the Department of State is seeking today.

Mr. Willis. I want to ask a few questions, and the other members will have the same opportunity.

In sections 1 and 2, the proposed law would add to present law the protection of heads of foreign states or foreign governments and foreign ministers. Now, I think I pretty well have in my mind who the head of a foreign state or head of a foreign government is. But I don't know what foreign ministers are.

Mr. KEARNEY. A foreign minister would be the head of the department of foreign affairs, the equivalent of our Secretary of State. The common term—for example, when our Secretary of State attends a conference, such as a conference of the powers on Germany, it is referred to as a foreign ministers' conference, and he is considered one of the foreign ministers attending. That is the standard terminology, Mr. Chairman.

Mr. LINDSAY. A minister is also something less than the Minister in Charge of the Foreign Office or the Secretary of State, we have officers with the title of minister who are below the Secretary of State.

Mr. KEARNEY. That is correct. But "foreign minister" is a technical word which means the head of the government department which deals with foreign relations in the country.

Mr. WILLIS. I have the same things in mind that the gentleman from New York has just touched on. I repeat, I think I know what the head of a foreign state or foreign government is. We come to the term "foreign minister." I do know from your explanation that that would include a foreign official having duties parallel and equivalent to or similar to our Secretary of State. Now, that I can follow. But I was under the impression that foreign ministers do include many other dignitaries.

Mr. KEARNEY. The term "foreign minister" as it is now used is limited to the individuals of whom I spoke. And there would be no more than 110 of these individuals involved in connection with this bill; that is, the head of the foreign government department dealing with foreign affairs. Thus the definition which is given in Satow's work, which is a standard work upon diplomatic intercourse between nations, is "the foreign minister or minister of foreign affairs is the regular intermediary between the state and foreign country."

It would be possible, if you feel it would clarify this language at all, to say "minister of foreign affairs" rather than "foreign minister." Both are used in international intercourse. And "foreign minister" currently is used more to describe this particular type of individual than any other name.

Mr. WILLIS. Suppose you used "minister of foreign affairs," would that assure that it would mean the headman conducting foreign affairs under the head of state, and that there would be only one for each country?

Mr. KEARNEY. Yes, sir.

I think the same is true of "foreign minister." But if you feel it would be safer to have "minister of foreign affairs" we could certainly have no objection.

Mr. WILLIS. The gentleman from Illinois suggests "plenipotentiary." Is that a different animal?

Mr. KEARNEY. No. The minister plenipotentiary would not be covered in language of this type.

Mr. WILLIS. Would the Under Secretary of State, if there were such a person from England, be covered by this bill?

Mr. KEARNEY. No, not unless he were the Acting Minister of Foreign Affairs. If there were a vacancy in the position of Minister of Foreign Affairs and the British Under Secretary were the Acting Minister of Foreign Affairs, I would think proper construction would be, if he were on an official visit he should be treated the same as a Minister of Foreign Affairs, but otherwise not.

Mr. WILLIS. Assuming that you would have such a class of government officials in England, would an Assistant Secretary of State from England visiting here be protected?

Mr. KEARNEY. No, sir.

Mr. WILLIS. What I want to be sure of is that we are referring to the headman only.

Mr. KEARNEY. The headman only.

Mr. WILLIS. Could Mr. Butler or the head of state of England, the Prime Minister, for purposes of a particular visit, send someone to the United States, someone below the rank of Minister of Foreign Affairs, with the result that he should be treated as such and regarded as such for the purpose of his particular mission; could that happen?

Mr. KEARNEY. It would have no effect whatever upon this statute.

Mr. WILLIS. I am talking about the scope of this statute. Let's understand what it means, or we are going to be in trouble sure enough.

Mr. KEARNEY. We get that type of representative here all the time. There are always foreign dignitaries coming in who have been designated by their foreign ministers to represent their countries on particular problems to negotiate with us. But they would not fall under this bill at all. They would have nothing to do with it.

Mr. WILLIS. You are improving the bill by talking about it now in that you are making it very specific.

Mr. KEARNEY. This is a very limited bill, Mr. Chairman.

Mr. WILLIS. I don't think the other sections are as limited as this one.

The present law reads:

> Whoever assaults, strikes, wounds, imprisons, or offers violence to the person of a head of a foreign state or foreign government.

Mr. KEARNEY. That is our proposal, Mr. Chairman. The present statute reads——

Mr. WILLIS. Wait a minute. The memorandum counsel handed me says that there would be added to present coverage "heads of foreign states or foreign governments and foreign ministers."

Mr. KEARNEY. That is correct.

Mr. WILLIS. The present law reads:

> Whoever assaults, strikes, wounds, imprisons or offers violence to the person of an ambassador or other public minister.

Now, "other public minister," wouldn't that cover the minister you now propose to add, foreign minister?

Mr. KEARNEY. No, sir; I would not say so, given the circumstances in which this law was written. This law was written in 1791. And at that time there were two general classes of envoys, let me say, who were assigned permanently to foreign governments, either an ambassador or a minister. They were generally referred to as public ministers. As a matter of fact, the United States didn't adopt the habit of sending ambassadors abroad until late. And all of our envoys abroad were called minister, that was their title. And they were described as public ministers of the United States. So that this statute is designed to cover——

Mr. WILLIS. Let's talk about the present law. In other words, you construe the present law reading "ambassador or other public minister" to mean the same as ambassador?

Mr. KEARNEY. That is right, except the head of a legation instead of an embassy would be a minister or charge d'affaires of a legation, that would be my construction of this langauge.

Mr. WILLIS. So that what you said awhile ago still holds?

Mr. KEARNEY. Yes, sir.

Mr. WILLIS. That this bill would add heads of foreign states—that would be the President of France, let's say, or the Prime Minister of England—and the foreign minister which you described to mean the headman conducting foreign relations comparable to our ambassador?

Mr. KEARNEY. No, comparable to our Secretary of State.

Mr. WILLIS. Secretary of State?

Mr. KEARNEY. Yes, sir.

This would not cover more than about, I would say, 300 high-ranking officials in the entire world.

Mr. WILLIS. Why 300? That is more than one per country.

Mr. KEARNEY. At the present time we have diplomatic relationships with 110 countries. In some of these countries the head of state and the head of government are the same, just as our President is head of both. In others they are different. For example, Queen Elizabeth is head of state in Great Britain.

Mr. WILLIS. I am sorry. Do you mean to say that the whole bill as amended would involve 300, or this addition?

Mr. KEARNEY. No, the addition would involve about 300.

Mr. WILLIS. Now, section 3 of the bill, according to this memorandum given to me, would amend 18 U.S.C. 1114, which makes it a Federal offense to kill certain specified Federal officials while engaged in the performance of their official duties, by adding "security officers of the Department of State and of the Foreign Service."

Now, that is a really large group, isn't it?

Mr. KEARNEY. Security officers, sir?

Mr. WILLIS. Yes.

Mr. KEARNEY. It would be a rather restrictive group. I would say there would be roughly 110 security officers who could be assigned to this duty of protecting the foreign heads of state. So that there would just be 110 officers. Of course, at any one time there might not be any of them acting and probably never more than about 8 or 10 engaged in this activity.

Mr. WILLIS. And that number would be the security officers of the Department of State as well as the Foreign Service?

Mr. KEARNEY. Yes.

Mr. WILLIS. How many did you say there were roughly, all told, although they may not be on duty?

Mr. KEARNEY. All told, approximately 110.

The limitation is determined by the fact that only those who have qualified with firearms the same way as FBI agents are qualified are allowed to participate in this type of protective duty.

Mr. WILLIS. Now, section 4 of the bill, according to this memorandum, would amend the act of June 28, 1955, which provides that security officers of the Department of State and the Foreign Service may carry firearms to protect—

heads of foreign states, high officials of foreign governments, and other distinguished visitors to the United States, the Secretary of State, and the Under Secretary of State, and official representatives and of the United States attending international conferences or performing special duties.

The amendment would authorize these security officers to—

arrest without warrant and deliver into custody any person violating 18 U.S.C. 111 or 112 in their presence, or if they have reasonable grounds to believe that the person to be arrested has committed or is committing such a violation.

Now, the arrest by the officers of people who are committing crimes in their presence, I suppose, is pretty good common law, without a warrant, but "if they have reasonable grounds to believe," where does that come in?

Mr. KEARNEY. That language, Mr. Chairman, is precisely the same language which is used to authorize the other Federal law enforcement agents such as the special agents of the Federal Bureau of Investigations, the U.S. marshals, and so forth, to make arrests on reasonable grounds of belief that a felony is about to be committed.

Mr. WILLIS. Any felony?

Mr. KEARNEY. Yes, sir. I think I have the language right here. Title 18, section 3052, authorizes the agents of the Federal Bureau—

to make arrests without warrant for any offense against the United States committed in their presence or for any felony cognizable under the laws of the United States if they have reasonable grounds to believe that the person to be arrested has committed or is committing such a felony.

Now, that is not extremely broad language. Now, the language——

Mr. LIBONATI. May I ask this question.

I just want you to classify the present powers. So that we get these two reconciled, the present powers vested in the security officer are the same in nature as those of a peace officer or a marshal of the court who serves process, in other words, he can carry a pistol, but he can only use it in self-defense, and he can only use it if the provocation is such that whoever his duties are to protect is threatened, in other words, the security of the person involved.

Now, what you are seeking to do is to limit to a certain number of specific officers of the Federal family the right to carry arms for enforcement purposes if necessary rather than just to wait for something to happen before they can use the weapons that are given to them for the protection of the individual—in other words, you are endeavoring to change the nature of his powers to conform with the effectiveness of his duties.

And I don't see anything wrong in that. I don't see anything wrong in that, for this reason, that in the nature of his responsibility he must act upon representations and maybe information. And, therefore, in his position he is handicapped under the present law, because there must be some overlap before he can enforce the law or proceed in his duties or responsibility.

Mr. KEARNEY. That is a very good statement of the problems, sir.

Mr. LIBONATI. I think that in those instances where it is limited to 110 security officers, if there are any others, under specificity of orders that may be given, there would be special orders on special assignments for a greater number of persons that would be limited to those public servants on that special duty; am I correct in that?

Mr. KEARNEY. That is correct, sir. And the special duty is limited, under the way we have proposed this amendment to the law, to those agents who are assigned while a foreign head of state such as President de Gaulle, for example, is in the United States, assigned to guard President de Gaulle. And we want to have them in a

position so that if it looks as if somebody is going to make an attack on President de Gaulle they can move in and arrest him before he has made the attack. That is really what we are concerned with.

Mr. WILLIS. One final question. I take it that the proposal to give this power of arrest would extend to the arrest of people only in connection with the security officers' assigned duties to protect these foreign dignitaries, the Secretary of State, and so on?

Mr. KEARNEY. That is right, Mr. Chairman, that is the complete limit of the authority.

Mr. WILLIS. And you say that under present law FBI agents have comparable powers of arrest without warrant, and on reasonable grounds of belief extending to all Federal offenses?

Mr. KEARNEY. All felonies; yes, sir.

Mr. WILLIS. Felonies?

Mr. KEARNEY. All felonies.

Mr. WILLIS. Is this a felony, or would it be made a felony? Is this bill dealing with felonies, assault?

Mr. KEARNEY. Yes, section 112 in its present form is a felony section.

Mr. WILLIS. Because of the penalty imposed?

Mr. KEARNEY. Yes, sir.

Mr. WILLIS. I can't see making it a felony to strike someone without defining the word "strike." Of course, that is present law, isn't it?

Mr. KEARNEY. That is the present law. As a matter of fact, it is in the present law to strike an ambassador, and the people we are interested in are much higher ranking than ambassadors.

Mr. WILLIS. That is all right. But to make it an offense to strike, maybe push a man, to make it a felony punishable by a fine of $10,000 and penitentiary confinement for so many years, and so on, that is a rough one. But if you say that is the law—I just wanted to understand it.

Mr. LIBONATI. Now, in view of the fact that this implementation is primarily to create a situation where they operate in conformity with full police powers if necessary in order to carry out their responsibilities, I see nothing wrong in this bill, in view of the special nature of the services and the limitation of the bill to those officers who are given this responsibility. If it became a general law for all of the so-called enforcement officers as such, who would become enforcement officers just as a marshal in carrying out the responsibilities of his court procedure to serve subpenas, et cetera, then it would be a different situation.

But this is purely significant in that its identification is with foreign ministers whose high protective obligation rests with our Government. I see nothing wrong, Mr. Chairman.

Mr. WILLIS. I think you may be buying it too fast. I think under the present law those would be——

Mr. LIBONATI. I think this is a necessary impementation of the present law, if they are to carry out their duties in conformity with the present law, and you and I know that not any of them are protected without this law, and all they seek to do is place themselves in a position where they are vested with powers consistent with their responsibility.

We had this in a murder trial many years ago, the *Durkin* case, involving a Secret Service man by the name of Shanahan. I think the older ones among you will remember it. And the question of arrest was important, and the powers of the individual who carries out the Government prerogatives under which he operates under special assignments. If this law had been on the books, then the defense could not have proceeded on the theory that Shananhan had no right and exceeded his duties in trying to make an arrest. You understand?

Mr. KEARNEY. Yes. That is one of the problems that worry us.

Mr. LIBONATI. So in that trial, if I may be apologetic, it is what saved Durkin's life.

Mr. LINDSAY. You mean he lost the case?

Mr. LIBONATI. He lost the case, but he got 35 years. There could be no defense for the killing, you understand, the incidence and evidentiary facts presented before the jury would indicate that the killing was without defense on the part of the defense as far as any theorization on the facts were concerned—and I mean theorization, Mr. Chairman. But we went into this question very thoroughly. And there was the admission that he exceeded his powers, and therefore attracted this defense of the individual against one whom he didn't know, who did not wear a star at the time and had no right to use his gun for the purposes that were intended.

Mr. KEARNEY. We have gone into this question, too. And we feel it is really not fair to ask our agents to do the things they are required to do without having legal backing. And somebody has to protect these foreign dignitaries. And it is our job.

Mr. LIBONATI. I see nothing wrong in this, Mr. Chairman, as one person.

Mr. WILLIS. Mr. Kastenmeier.

Mr. KASTENMEIER. First of all, I would like to compliment Mr. Kearney on his testimony.

I would like to ask just one question. If the Prime Minister, the foreign minister, and the ambassador of a country were here at the same time, would all three be vested with this protection?

Mr. KEARNEY. Separate parts of it. As far as protection is concerned, we give a head of state and a head of government protection by the assignment of agents to guard him while he is here in the United States.

Foreign ministers we do not, unless it is specifically requested by the foreign government, or unless we have some information which makes it appear to us necessary to assign agents to protect them.

Ambassadors do not receive any protection from our agents at all.

Mr. KASTENMEIER. Apart from assigning agents, as far as the crime of assault is concerned, it would be a crime to assault any one of the three of these people while they were in this country?

Mr. KEARNEY. Yes.

Mr. KASTENMEIER. In other words, the head of state doesn't preempt the protection of the other two?

Mr. KEARNEY. No.

Mr. KASTENMEIER. Conceivably this could be four people, in the case of Great Britain you could have the Queen, Prime Minister, the foreign minister, and the ambassador; all four might be protected, but no more in any case?

Mr. KEARNEY. Yes. I doubt whether the British would let them all out of the country at the same time.

Mr. LINDSAY. I just have two quick questions to get the record clear.

First, I would like to compliment you on narrowing this bill down as you have over the submission that was made last year. This is a very substantial change. A number of people were covered.

Second, I understand that you do not feel that the State Department and its security officers now have these powers that you have asked for in this bill.

Mr. KEARNEY. That is correct, sir.

Mr. LINDSAY. Next, is it now the practice that when a person from a foreign country, who would be covered by this bill, comes to the United States, he will be safeguarded only by State Department security officers and not by FBI or Secret Service?

Mr. KEARNEY. That is correct.

Mr. LINDSAY. And is it the practice of the State Department to supply this protection, at any and all times, when persons in this category come to the shores of the United States?

Mr. KEARNEY. Let me ask Mr. Lynch if it covers every minute. This I am not sure.

It is a 24-hour coverage for heads of state and heads of government. If it is necessary for a foreign minister, because he has requested it or for some other reason, in such instance it is 24 hours a day for them also. That means that we are the only security agent, we have the security agents around all the time; local police help out on this sort of thing, but we are the ones who have the 24-hour-a-day responsibility.

Mr. LINDSAY. Lastly, do I understand your testimony to mean that there have been instances in recent times when you have felt that there was a danger posed, and you were not able to act because of the absence of statutory powers?

Mr. KEARNEY. I will give an example. Mr. Lynch here was one of our agents who stopped the attack on Tito in the Waldorf-Astoria. He may have lacked authority to do this, and might have gotten in trouble, except the people who were overcome thought he was part of the New York City Police Force.

Mr. LINDSAY. I thank you.

Mr. WILLIS. Mr. Martin.

Mr. MARTIN. Mr. Kearney, you say on page 3 that the State Department undertook the task of protecting foreign dignitaries in 1917. What was the source of that authority?

Mr. KEARNEY. The source of the authority was quite limited, which is one of the things that has troubled us. It was the responsibility under international law, which the U.S. Government had, to insure the protection of these distinguished visitors, and no one else took up the burden. And we felt we had to.

Mr. MARTIN. In other words, prior to that time no one was protected?

Mr. KEARNEY. No. But prior to 1917, as I remarked starting out, there wasn't so much of this visiting back and forth of heads of state and heads of government.

Mr. MARTIN. What classification do you give these officers that protect these foreign dignitaries? How are they classified? What title do you give them?

Mr. KEARNEY. Security officers, or special agents—one or the other.

Mr. MARTIN. That is all I have.

Mr. WILLIS. We will stand in recess for a half hour.

(Whereupon, a half-hour recess was taken.)

Mr. WILLIS. The subcommittee will come to order.

The next witness on our list is Mr. Taylor, Acting Chief, General Crimes Section, Criminal Division, Department of Justice.

We are glad to have you, Mr. Taylor.

STATEMENT OF B. FRANKLIN TAYLOR, JR., ACTING CHIEF, GENERAL CRIMES SECTION, CRIMINAL DIVISION, DEPARTMENT OF JUSTICE

Mr. TAYLOR. My name is B. Franklin Taylor, Jr., and I am Acting Chief of the General Crimes Section, Criminal Division, Department of Justice.

I have a rather brief statement which I think you gentlemen have before you. And I would like to read it, if I may.

Mr. WILLIS. Very well.

Mr. TAYLOR. H.R. 7651 would do three things:

First, section 112 of title 18, United States Code, now makes it a felony to assault, strike, wound, imprison, or offer violence to the person of an ambassador or other public minister. H.R. 7651 would amend section 112 so as to expand its coverage to include heads of foreign states and foreign governments and foreign ministers.

Second, section 1114 of title 18 makes the killing of certain officers and employees of the United States while engaged in or on account of the performance of their official duties a Federal offense. Section 111 of title 18 provides penalties for anyone who forcibly assaults, resists, opposes, impedes, intimidates, or interferes with persons designated in section 1114 of title 18 while engaged in or on account of the performance of their official duties. Section 3 of H.R. 7651 would amend section 1114 of title 18 to include security officers of the Department of State and the Foreign Service.

Third, the act of June 28, 1955 (69 Stat. 188, sec. 170e, title 5, U.S.C.) authorizes security officers of the Department of State and the Foreign Service, designated by the Secretary of State to carry firearms for the purpose of protecting heads of foreign states, high officials of foreign governments, and other distinguished visitors to the United States, the Secretary of State, the Under Secretary of State, and official representatives of foreign governments and of the United States attending international conferences or performing special missions.

Section 4 of H.R. 7651 would amend the act of June 28, 1955, by adding a provision authorizing security officers of the Department of State and the Foreign Service engaged in the previously mentioned protective duties—

to arrest without warrant and deliver into custody any person violating section 111 or 112 of title 18, United States Code, in their presence or if they have reasonable grounds to believe that the person to be arrested has committed or is committing such a violation.

This language is similar to that employed in statutes granting the power to arrest without warrant to officers and employees of the Bureau of Prisons (18 U.S.C. 3050), agents of the Federal Bureau of Investigation (18 U.S.C. 3052), and United States marshals and their deputies (18 U.S.C. 3053).

The need for this legislation has been set forth in the Department of State's transmittal letter to the Speaker of the House of Representatives, and testified to by Mr. Kearney this morning. The Department of Justice thinks that H.R. 7651 is appropriate to meet this need and finds it acceptable.

Mr. WILLIS. Do you agree with the previous witness as to the meaning of the words "foreign minister"? And will you expand on that a little bit?

Mr. TAYLOR. It is my understanding—and this information largely stems from the State Department, which we viewed as the expert in this sort of terminology—but it is our understanding that "foreign ministers" generally refers to persons who would be in the position of our Secretary of State; those persons in foreign governments who would have charge of the conduct of foreign affairs. A foreign minister would be the same as a minister of foreign affairs, or our Secretary of State.

And I understand that the term "public minister," which is in title 18, section 112 at the present time, is a broader term, and traditionally has been used to designate heads of legations and officials in that category.

Mr. WILLIS. Comparable to an ambassador?

Mr. TAYLOR. Yes. I would suppose, and perhaps—yes, comparable to an ambassador; ambassadors and others of a similar level.

Mr. WILLIS. In other words, in certain areas, as I understand it, our chief diplomatic representatives in foreign countries are called ambassadors and in some cases ministers or public ministers?

Mr. TAYLOR. But it is our understanding that the expansion in coverage that would result from the enactment of this bill would be merely this: that it would extend it to include heads of foreign states or heads of foreign governments, and foreign ministers, which we interpret to mean ministers of foreign affairs, those persons in a foreign government—that person in a particular foreign government who would have charge of the conduct of foreign affairs similar to our Secretary of State.

So it is a relatively limited expansion.

Mr. WILLIS. At the very least I think that if the bill is approved we will incorporate language in the report to say that that is what we intend for those words to mean.

Mr. TAYLOR. I think that would be a necessary and desirable thing to do.

Mr. WILLIS. We will take the testimony of the State Department as to that. And I mean nothing by that except to say that when the bill goes to the floor of the House we want it understood that this is what it means and nothing else. If we don't, we are going to be in trouble.

Mr. TAYLOR. If I may, Mr. Willis, I noticed when you were talking to Mr. Kearney you mentioned the power to arrest, you referred to the language "or if they have reasonable grounds to believe that a

person to be arrested has committed or is committing such a violation."

The authority that the FBI agents have—the Director and some of the other higher officials in the FBI, and United States marshals and their deputies—is couched in this identical language, or " if they have reasonable grounds to believe," which is one way of spelling out probable cause. The courts have said that "probable cause" is the constitutional language, and "reasonable grounds to believe" is a perhaps more detailed way of expressing probable cause.

Mr. LIBONATI. It would be in the nature of a security detention, too, where you had information that certain individuals would be antagonistic to the minister coming in, that you could use such enforcement that would at least add to the security of this individual, and in that way you would eliminate any problem that might occur. The various enforcement officers of the United States could keep under passive surveillance, and even those on the city level such as the police department could make investigations of individuals who might provoke trouble, and you could assert a protective custody in preventing criminal departures.

Mr. TAYLOR. I don't think this language deals with a protective custody situation. It is much narrower.

Mr. LIBONATI. Wouldn't it give you the right to have those who had made certain statements or threats obtained by the authorities—all authorities, FBI, yourself, and everybody else—to prevent these outbreaks, and so forth, that would occur if they had freedom of movement to congregate at the point where this individual would traverse, as in the Tito situation, which shows an attempt at assault upon this individual who was under the protective custody of the U.S. Government? The same type of protection that is given by the police departments of various cities, drawing men from various cities who know individuals who are, for instance, pickpockets, and they keep those persons under passive surveillance or protective custody, if I may use the term in its broad, broad sense?

Do I understand?

Mr. TAYLOR. I am sure that such individuals would be kept under surveillance and all protective steps necessary would be taken. But this language is narrower—this is the power to arrest without a warrant, and it really covers two types of situations.

Mr. LIBONATI. I don't see anything wrong in preventing provocation, do you, where it is almost assertive and a part of the individual by threat, and so forth? Do you think that they should be limited in their operations when they make a survey of this entire locality where this operation is going to take place? I don't think that that would violate any of the rights of individuals who had placed themselves in a category that they would make trouble, do you?

Mr. TAYLOR. There you are getting into some rather close constitutional questions. But that isn't what we have here. This bill is far narrower than that.

Mr. LIBONATI. Well, you have covered it by the legislative verbiage of the bill. You say, "If they have reasonable grounds to believe that the person to be arrested has committed or is committing such a violation."

Mr. TAYLOR. Yes.

Mr. LIBONATI. So you extend that to the point where you say, "If we do not keep under surveillance this person who has threatened to

violate the peace of the community, then naturally we are not giving this person added protection for preventing an overt act on the part of that individual." I don't think that would be critical of any violation of his constitutional rights, because by the threats he waived the right of charging violation of his constitutional rights, he has waived it.

If we had done that when the President visited Dallas and made investigations, and so forth, beforehand, and saw to it that persons in this area were at least interviewed, and so forth, would that be a violation, in conformity with their general responsibilities which are in a delicate situation where protection is the essence of their duties? I don't think it would.

Mr. TAYLOR. We are not giving that power in this bill, that is my only point.

Mr. LIBONATI. I don't say you do.

Mr. TAYLOR. Whether such a power would be wise or not—in this bill is merely the power to arrest without a warrant where the offense has been committed in their presence, or where they have rasonable grounds to believe that the person has committed or is committing it. And the offense we are talking with is a violation of section 111 or 112 of title 18.

Mr. LIBONATI. A threat voiced to another coming to the attention of the protecting officer would make it an obligation on his part to arrest without a warrant and detain the person. I think you are on good ground there.

Mr. TAYLOR. I think this provision is sound. And the power being given to arrest without warrant is a limited one and a constitutional one, and is the same one possessed by FBI agents, deputy marshals, marshals, and very similar to the power possessed by employees of the Bureau of Prisons.

Mr. LIBONATI. You are in a parallel situation where someone states that they are carrying a bomb on a plane, and they detain that person; there is no bomb on the plane, and there is no bomb in his possession, but with the volunteering of this information, which comes within the responsibility of the officer who is a security officer, it would be natural that he would try to prevent any overt act from being committed. I think that in similar instances you would be handicapping them, and this bill wouldn't carry out its practical objectives. I am only thinking in terms of their purposes in operation, which is in conformity with their responsibilities under this bill.

Thank you.

Mr. WILLIS. I want to compliment whoever prepared this new version for making it more restrictive. And at this point I think I shall read in the record a provision of the last bill we considered, H.R. 11588, considered by us in the 87th Congress, which is as follows:

> Whoever assaults, strikes, wounds, imprisons, or offers violence to the person of an ambassador, public minister, and other duly accredited foreign diplomatic officer, any other person entitled to privileges and immunities of diplomatic personnel in accordance with any treaty or other international agreement to which the United States is a party, any head of foreign state or foreign government, or any other official of a foreign government shall be fined not more than $5,000 or imprisoned not more than 3 years or both.

The present bill, H.R. 7651, which we are now considering in this context, reads as follows:

> Whoever assaults, strikes, wounds, or offers violence to the person of a head of a foreign state or foreign government, foreign minister, ambassador, or other public minister, in violation of the law of nations, shall be fined not more than $5,000, or imprisoned not more than 3 years, or both.

So that the coverage of this bill is much more restrictive than the one we considered last year.

So much for the record, laying the two proposals side by side.

Now, of course, neither of the bills changes the penalty of the present law. In other words, the present law, the bill last year, H.R. 11588, and the present bill, H.R. 7651, all provide the following when a deadly weapon is used:

> Whoever, in the commission of any such act, uses a deadly or dangerous weapon, shall be fined not more than $10,000, or imprisoned not more than 10 years, or both.

I wonder whether, as a matter of administration of the law and in the interest of procuring convictions, these penalties are stiff when the language speaks of assaults, striking, wounding, and so on?

Mr. TAYLOR. Mr. Willis, during the intermission——

Mr. WILLIS. Of course, there is a distinction in the penalties; namely, $5,000, or 3 years or both, increased to $10,000 or 10 years, because of the use of a deadly weapon. But in both instances it seems to me that this is a pretty steep penalty for some of the possible incidents which could lead to arrest and trial. I know it is discretionary with the Federal judge. You have to give this bill to the Members of Congress to vote on, it is pretty steep.

Mr. TAYLOR. During the intermission, Mr. Willis, I was looking at some of the law books. There was a case in this area that went to the Supreme Court in 1826, *U.S.* v. *Ortega*, which is in 24 U.S. 466. And the statute that was involved then is probably the earliest forerunner of the present one. And that read in effect that if any person shall assault, strike, wound, imprison, or in any manner infract the law of nations by offering violence to the person of an ambassador or other public minister, et cetera. And the penalty there was 3 years and a fine at the discretion of the Court.

And that was an enactment in the Crimes Act of 1790. So this penalty that we have today is essentially the same penalty that has existed since 1790.

And, of course, it is a maximum, it isn't a penalty that necessarily would have to be imposed, it is the maximum penalty. And I would assume that the sentencing court, in determining what sentence he should hand out in a case coming under the statute, would be moved considerably by the nature of the assault, and that a mere striking or more or less technical violation would probably not receive a punishment anything like the maximum permitted here. I don't think this is necessarily harsh in terms of its penalties.

Mr. WILLIS. My colleague from Illinois mentioned the crime of the use or threat of use of a bomb in a plane. Some years ago someone put a bomb in his mother's grip and there was an explosion over in Colorado, as I recall, and no Federal law. So we, perhaps moving with too much rapidity, passed a bill and made that a Federal offense.

Then we had this case. There was a lawyer commuting from New York to his home. He had bought presents for his kids, and jokingly on the plane someone said, "What is that?"

And he said, "Well, that is a bomb."

And that man was prosecuted. And he had technically violated the law.

But because of the heavy penalty no one could be convicted. And they said we would have to come back and amend the bill.

Mr. LINDSAY. I have no questions other than that, I take it, the language on page 3 of the bill, "have reasonable grounds to believe that the person to be arrested has committed or as committing such a violation," is the same language that was contained in the FBI measure. The formal language is "about to commit," isn't it?

Mr. WILLIS. They adopted the actual language in connection with FBI agents, FBI Director and other officials, U.S. marshals, and I think one other category—employees of the Bureau of Prisons.

Mr. TAYLOR. Yes. Mr. Lindsay, the language in 3052, title 18, which is the powers of the FBI, ends, "if they have reasonable grounds to believe that the person to be arrested has committed or is committing such a felony," which is identical. And you find exactly the same language in section 3052, which is the arrest powers of marshals and their deputies. So this language has become more or less standardized. It has been before the Supreme Court, too, who didn't comment adversely on it at all.

Mr. LINDSAY. That language has been tested in the Supreme Court?

Mr. TAYLOR. I say, it has been before the Supreme Court in *Henry v. U.S.*, which is 361 U.S., page 98. And the Supreme Court in its opinion quoted the language and said, "This statute states the constitutional standard," and then went right on from there. It found that in that case there wasn't probable cause, and the arrest was not proper. But it had no quarrel with the language itself.

Mr. LINDSAY. Are the Department and its constituent agencies satisfied that this language is adequate?

Mr. TAYLOR. Yes, sir.

Mr. LINDSAY. Thank you.

Mr. WILLIS. Mr. Libonati.

Mr. LIBONATI. Wouldn't you consider that if a threat were made at, say, against a certain person, an ambassador who was going to visit the United States, that upon the utterance of that threat it would be a continuing violation in itself for the purpose of bringing that individual at least into detention for questioning; wouldn't you consider that to be true?

Mr. TAYLOR. Sir, that would not be a violation of title 18, section 112, because that speaks entirely of whoever assaults, strikes, wounds, imprisons or offers violence. I don't think a mere threat would be encompassed within this section.

Mr. LIBONATI. I mean under section 4, wouldn't it give him the right to at least detain for the purposes of questioning an individual on his statement or letter that was written to someone, or other information that the security may procure through its various avenues of information?

Mr. TAYLOR. I am certain that such a person would undoubtedly be checked out and interviewed, and so forth. But I couldn't say that

it would give them the right to arrest him, because I don't think that is a violation of any Federal statute, merely to threaten the life of an ambassador.

Mr. LIBONATI. Detention for questioning. After all, this is a signal service peculiar to the law of nations for the protection of visiting officials who are categorized under this law as being under our security, our protection. It is a little different than the ordinary pursuits of protection to the citizenry and the public, this connotes an identification with international situations that may result if that individual protection is inadequate and results in an embarrassment which may have international implications.

Mr. TAYLOR. I would just like to make it clear that there is nothing in the bill that we are talking about today that would reach that situation. That has nothing to do with detention of somebody who threatens the life of an ambassador. This has to do solely with arresting without a warrant for violations which would be restricted to assaults, strikes, wounds, and so forth. That arresting power has nothing to do with detaining somebody for questioning whether he has threatened the life of an ambassador. That isn't in this bill at all.

Mr. LIBONATI. Thank you.

Mr. WILLIS. What would constitute an offer of violence? The whole sentence is "Whoever assaults, strikes"—that is awfully loose—"wounds, imprisons"—that is understood—"or offers violence"—you have "strikes" or "offers violence to the person of."

Mr. LIBONATI. I think that connotes an overt act of either pulling a pistol or striking with the fists—I think it is an overt act that is mentioned, in accordance with the intention of the individual to do harm. I think that is it.

Mr. TAYLOR. Offering violence, I would assume, is another way of saying assaults or strikes, an offer of violence could be an assault, or it could be battery. And I assume that would be if you did violence or threatened violence as to put a person in fear of violence.

Mr. WILLIS. If all those words mean almost the same thing, and are more or less related to assault, couldn't we strike some of them out and make this bill more palatable?

Mr. TAYLOR. I think it is always possible.

Mr. WILLIS. Whether you are dealing with present law or not, when you start debating a bill, the members are not going to debate the amendments, they are going to debate the present law. You say you would change the interpretation. You cited one case—I don't suppose you can cite another case of prosecution under this. I don't think there has been much adjudication of the statute.

Mr. LINDSAY. If the chairman would yield, I really can't believe that the chairman is suggesting that we simplify the language here in drafting statutes; that really is too shocking to be believed. What would the Charles Dickenses of this world do if lawyers should ever agree to simplify the language so that people could understand it? That can't be. We don't want to violate any traditions to that extent.

Mr. LIBONATI. If you do that, Mr. Chairman, then you will have to spell out the intention in the bill, which is a measurable legalistic term interpreted by the courts, and you would have a more comprehensive definition of these purposes than you have now. So in reality instead of simplifying it you would have to cover more ground to

carry out the true purposes of this act, which specifically is to give these security agents the right to prevent bodily harm and protect the persons affected under the bill.

Mr. WILLIS. We will stand in recess.

And the record will remain open for 10 days to give an opportunity for people who have at least indicated an interest in opposing the bill to do so, and perhaps to discuss the style a bit with the proponents of the bill.

Mr. LIBONATI. May I ask just one question?

Are there many rulings that have been made on the law as it is now written as to express terms, et cetera, in the old law?

Mr. TAYLOR. Very few cases. Mr. Willis is correct in his observation a few minutes ago. When you look in the code annotated under that statutory provision, you will find very few cases cited, and nothing more recent, I believe, than the 1800's. There have been very few prosecutions under this.

Mr. LIBONATI. Then any changes wouldn't disturb the present statutes of its interpretation by definition of the courts?

Mr. TAYLOR. I wouldn't think so. On the other hand, we don't have any real difficulty with it as it stands.

Mr. LIBONATI. Does the Department of Justice have any suggestions as to any changes embodied in that portion of the bill?

Mr. TAYLOR. We didn't give that any thought, because I don't think it poses any problem as it stands. It may be a little redundant, but some criminal statutes are. And this language has existed for years and years and years, and there has been no difficulty with it. And the general rule is to leave well enough alone and only mess with language when it begins to give you difficulty.

Mr. LIBONATI. Maybe in its indefiniteness it gives the court the wider latitude.

Mr. WILLIS. There is no doubt about that.

Mr. LIBONATI. And I think that is good.

Mr. WILLIS. The subcommittee will adjourn.

(Whereupon, at 12:20 p.m., the subcommittee adjourned, subject to call.)

○